

U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd.
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)



Issue date: 17May2001

CASE NO.: 2000-LHC-00301

OWCP NO.: 2-122606

In the Matter of:

JEFFREY HAYNES,
Claimant

v.

VINNELL CORPORATION,
Employer
and

INSURANCE CO. OF PENNSYLVANIA C/O AIU NORTH
AMERICA,
Carrier

APPEARANCES:

Gary B. Pitts, Esq.

For Claimant

Roger A. Levy, Esq.

For Employer/Carrier

BEFORE: JAMES W. KERR, JR.
Administrative Law Judge

DECISION AND ORDER –DENYING BENEFITS

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.*, (the "Act"), and as extended by the Defense Base Act, 42 U.S.C. §1651. The claim is brought by Jeffrey Haynes, Claimant, against his former employer, Vinnell Corporation, Respondent. A hearing was held in Metairie, Louisiana on October 30, 2000, at which time the parties were represented by counsel and given the opportunity to offer testimony, documentary evidence, and to make oral argument. The following exhibits were received into evidence:

- 1) Court's Exhibit No. 1;
- 2) Claimant's Exhibits Nos. 1-84; and
- 3) Respondent's Exhibits Nos. 1-26.¹

Upon conclusion of the hearing, the record remained open for additional exhibits and the submission of post hearing briefs, which were received by both parties.² This decision is being rendered after having given full consideration to the entire record.

STIPULATIONS³

After an evaluation of the record, this Court finds sufficient evidence to support the following stipulations⁴:

- (1) Claimant was assigned to work in the Persian Gulf region (Saudi Arabia) between November 2, 1989 and December 21, 1991;

¹ The following abbreviations will be used in citations to the record: CTX - Court's Exhibit, CX - Claimant's Exhibit, RX - Employer's Exhibit, and TR - Transcript of the Proceedings.

² Claimant submitted additional post hearing exhibits, CX-17, with no objection from Employer. Employer subsequently submitted its remaining exhibits, RX-25 and RX-26, post hearing with no objection.

³ CTX-1

⁴ At the hearing on October 30, 2000, both parties also stipulated that all of the SCUD missile attacks occurred in 1991. This stipulation was marked on RX-22.

- (2) The fact of the injury/accident is disputed;
- (3) Claimant alleges that toxic exposures in the Persian Gulf caused or contributed to his disability. Respondent disputes this allegation;
- (4) An employer/employee relationship existed from November 2, 1989 to December 21, 1991, but an on-the-job injury is disputed;
- (5) Whether the alleged injury arose in the course and within the scope of employment is disputed;
- (6) The date Respondent was notified of the injury was January 9, 1998;
- (7) The date of notification of the injury/death pursuant to Section 12 of the Act to Respondent was January 9, 1998. Notification to the Secretary of Labor was given on December 31, 1997;
- (8) Notice of Controversion was filed on January 14, 1998;
- (9) An informal conference was held on October 13, 1999;
- (10) Whether disability resulted from the injury is disputed;
- (11) Medical and disability benefits have not been paid;
- (12) Maximum medical improvement is disputed;
- (13) The date Claimant returned to regular employment is disputed; and
- (14) Claimant's average weekly wage is \$1,100.88.

ISSUES

The unresolved issues in this proceeding are:

- (1) Fact of Injury and Causation;
- (2) Nature and Extent of Disability/Loss of Wage Earning Capacity;
- (3) Disposition of 8(f) application; and
- (4) Reasonable and Necessary Medical Benefits.

SUMMARY OF THE EVIDENCE⁵

I. TESTIMONY

Jeffrey Haynes

Jeffrey Haynes, Claimant, testified that he is thirty-nine years old with a college education. He stated that since graduating from college he has owned an auto parts business and worked as a licensed

⁵Both parties submitted numerous articles, studies, and reports published on the causes and symptoms of Persian Gulf War Syndrome. These articles have been considered by the Court and will be discussed in the body of the opinion.

EMT. He added that he applied to work for Respondent in 1989, primarily because the company was starting a new medical program. He testified that the program would be held in Saudi Arabia. Claimant stated that he was hired as a senior instructor of trauma medicine and left for Saudi Arabia at the end of October, 1989. He added that he was located at Respondent's compound approximately eight miles north of Riyadh. TR. 22-27.

Claimant testified that his job duties included instructing combat medics for the Saudi military. He explained that he participated in the SANG program, which focused mainly with telecommunications, but also directed fire during the war. He stated that his job performance was good, however, he admitted to disagreeing with one particular supervisor about his instruction methods in the classroom. Claimant admitted to receiving a negative job performance review due to these disagreements. Claimant added that in July, 1990, he was given a superior and outstanding job performance rating. He testified that in November, 1990 he became the procurement assistant, handling medical supplies for the division. TR. 27-30, 53-55, 68-72.

He stated that he was given a pre-employment performance physical, on which he also received outstanding marks. Claimant described his health prior to going to Saudi Arabia as excellent. He stated that he ran, lifted weights, and did many outdoor activities. Claimant testified that he can no longer do these activities because of his deteriorating physical condition. He added that in addition to the bleeding gums, his teeth were loose, and he had several sores in his mouth. TR. 53-55.

Claimant testified that between November 2, 1989 and October 30, 1990, he ventured out into the countryside, close to the northern border of Saudi Arabia. In particular he stated that he was sent on a reconnaissance operation, north of Riyadh, from January 2, 1990 to February 15, 1990. He stated that the Iraqi military invaded Kuwait on August 2, 1990. He added that he was then in Riyadh. Claimant stated that after the invasion, he was assigned to write remedial training guidelines for the medics on the borders. He stated that he actually was sent to the eastern province of Saudi Arabia to train these medics during August and September, 1990. Claimant testified that he was approximately fifteen miles from the border during that time, and moved as close as five miles. He added that he was allowed to drive a light-armored vehicle during this time. This trip was documented in the 17-day TDY issued for Claimant. He stated that there was no fighting where he was stationed. Claimant added that he never remembered being told by a general announcement that he could opt to leave Saudi Arabia when war was imminent. He added that he was not in Saudi Arabia when the ground fighting between the Coalition and Iraqi troops began in early February, 1991. Claimant testified that he was not present when the air bombing began in mid-January, 1991. He did state that he saw evidence of SCUD strikes upon his return, and retrieved a piece of the SCUD missile near the Vinnell camp. He stated that he left Saudi Arabia in December, 1990 and returned on February 28, 1991. TR. 74-91, 122.

Claimant added that after the air and ground wars had stopped in August, 1991, he took time off and flew to the Chicago Beach Hotel in Dubai for vacation. He confirmed that the following month, he traveled to Jedda, near the Red Sea. Claimant also stated that he went on several excursions outside of

his compound in Riyadh, most often to Al-Dahriyah. He testified that he traveled both north and south of the compound. He added that he went both on and off-road during these excursions. He stated that he got each Friday off and was able to sign out a vehicle without filling out an actual TDY slip. Claimant testified that at no time did he ever take any PB pills or have any inoculations. Claimant stated that after his contract was completed, his contract was not renewed. He added that he did want to continue with Respondent, but he did not feel well enough to pursue the issue. Claimant testified that after the ground war, his last assignment was writing manuals for curriculum development, in which he was in an office. TR. 93-114.

Claimant testified that he currently suffers from numerous physical conditions, including chronic allergy problems, cold feet and hands, insomnia, chronic and severe fatigue, intermittent skin rashes on hands and face, chest pain and tachycardia, shortness of breath, red and itching eyes, abdominal pain, excessive gas, constipation, diarrhea, cramping bloating, fevers, muscle cramps, headaches, loss of feeling in the fingers, pain and swelling in hands and joints, premature ventricular contractions, pain in the feet, and night sweats, muscle atrophy, bleeding gums and tooth sensitivity, hand tremors and muscle twitches. Claimant testified that his mental conditions include anxiety, depression, difficulty concentrating and motivating himself, moodiness, short term memory loss, balance problems and loss of coordination. He stated that he did not suffer from any of these symptoms, other than an occasional cluster headache from sinus infections, prior to his employment with Respondent. With regards to the headaches, Claimant admitted that he brought Percodan, a narcotic, with him when he went to Saudi Arabia. He stated that his chest pain and tachycardia actually began while he was in Saudi Arabia, along with a rapid heart rate. He added that his gastrointestinal problems also began during his employment and currently manifest in phases, lasting for weeks at a time and then disappearing. Claimant testified that his balance problems get so severe that he runs into objects, causing bruising. He stated that he unsuccessfully attempted to improve his walking through orthopedic pads in his shoes. Claimant added that he had no prior problems with coordination and even did such activities as rock climbing and rappelling. TR. 30-41, 55-56, 67.

Claimant stated that since his employment in the Gulf War area, his eyes became increasingly dry, to the point that he could not wear contact lenses. He added that he had eye surgery to correct his vision and had plugs installed into his tear ducts. He stated that he has continuous headaches since his return from the Gulf, which lasts up to seven weeks at a time. Claimant stated that he has experienced anxiety manifesting in hand tremors and depression due to his physical problems. He added that his cold sensitivity has become so extreme that he cannot touch a cold soda can. Claimant attributed his increasing lack of concentration and motivation to his chronic fatigue. He stated that his short term memory loss has increased to the point that he cannot remember phone numbers and certain daily activities. TR. 48-53.

He stated that while in Riyadh, he was bitten numerous times by sand flies during the day and fleas at night. He stated that he used DEET on his skin as an insect repellent. Claimant stated that the camp where he stayed was routinely sprayed for mosquitos as well as his own room. Claimant added that he ate local food the entire time that he was in Saudi Arabia and experienced extreme heat and cold. He testified that he flew to the United States before Christmas for vacation, but returned to Saudi Arabia

around February 25 and 26, 1991. After his return, he stated that he was issued a gas mask and chemical protective suit by the U.S. Army for the period of time that he was on the border. Claimant added that this was the northern border area of Saudi Arabia. He stated that he requested to go see the effects of the war, because he had written several manuals on environmental health.. He testified that during that time spent on the border, the oil fire smoke was visible and resembled a “smoky haze.” TR. 41-47.

Claimant testified that he was within the nerve gas plume from Khamisiyah and frequently saw dead livestock without any obvious trauma. He added that he was present in Saudi Arabia when bombs were exploding. Claimant also stated that while he was on the border, there were frequent sandstorms and, he had no shelter. TR. 47-48.

He stated that he first made a connection between his symptoms and his exposure in the Persian Gulf when he attended a Gulf War conference in 1997. He added that he had seen several doctors hoping to find out what was wrong with him. He stated that his physical and mental symptoms manifest in cycles, but his fatigue, joint pain, sore throat, and tachycardia are constant. TR. 48-51, 56.

Claimant testified that after he finished his contract with Respondent in December, he applied to paramedic school. He stated that he began his studies in March, 1992 and received his certificate. Claimant added, however, that he could not work as a paramedic, because he lost his muscle strength and his endurance. He stated that he also did not want to be around ill people anymore, because he would easily become sick himself. Claimant stated that after he quit his paramedic job, he was employed with various companies for short lengths of time. He started a small retail firewood business for an unspecified period of time, performed odd jobs for the State Park superintendent, supervised lifeguards at a lake, and worked at a gym handing out equipment. Claimant stated that he next began working for Tyson Foods as a management trainee, but was unable to complete the program due to his illnesses. He added that he returned to Ft. McClellan, where he had been employed at the gym, and began working at an auto store. He stated that he worked at the auto craft shop for three months and has not done any full-time work since. Claimant testified that he did do “fill-in” work as an EMT for Tyson Foods for approximately a year and a half. Claimant stated that he has not been employed since 1997. Claimant also testified that he often listed himself as either self-employed or as an equity trader, because he had several small investments. TR. 57-60, 114.

He stated that he underwent a battery of tests and participated in a government funded study on Gulf War Illness in 1997. He stated that he was treated with IV antibiotics during this study, which helped him, but did not completely alleviate his symptoms. Claimant stated that he was familiar with advances in scientific research on stem-cell repair for brain damage, but would never be able to afford the medications on his own. Claimant admitted to being hostile to some of Respondent’s physicians, because he felt like they were not trying to help him. TR. 60-65, 116.

Claimant testified that he was given two commendations while employed in the Persian Gulf, one for the war effort and the other for successful completion of the contract. TR. 64.

Larry William Wright

Larry Wright testified that he is currently employed by Respondent, Vinnell Arabia. He stated that he has been employed by the company since July, 1995. Mr. Wright listed his education background as consisting of a Business Administration degree with a Masters in Government Contract Management and Project Management. He gave his current position as Director of Business Operations. Mr. Wright stated that he has continuously worked in Riyadh since 1987. He stated that Respondent's mission is to provide military training to SANG, the internal security military force. TR. 127-131.

He stated that he was acquainted with Claimant for a short period of time when Claimant was a procurement assistant. He stated that the operation in Riyadh was assigned to two of the SANG brigades, located in Riyadh, Hufuf or Ahassa. Mr. Wright testified that the first brigade was never deployed outside the Riyadh area. TR. 132-140.

Mr. Wright did state that he would see dead animal carcasses in the desert, but that he never saw dead animals with no visible wounds. He testified that to the best of his knowledge, Claimant's claim of Gulf War Illness was the only such claim brought by Respondent's employee from Camp Vinnell. He conceded that pesticides were sprayed in the Vinnell camp for sand flies, fleas, and mosquitos. He stated that he was present in Saudi Arabia during the bombing of Kuwait, but did not personally travel to the border area to see the oil fire smoke. He stated that during that time, the sky was hazy over Riyadh and there was a very fine particulate in the air. He stated that Respondent's policy was that employee's could voluntarily leave Saudi Arabia once it was clear that war would break out. TR. 142-148.

II. MEDICAL DEPOSITIONS AND RECORDS**1. DEPOSITIONS****William J. Rea, M.D.**

Dr. Rea testified that he is a surgeon, board-certified in cardiovascular surgery, general surgery, and environmental medicine. He stated that he is affiliated with Garland Community Hospital and the Director of the Dallas Environmental Health Center. He stated that he has personally treated Gulf War veterans for toxic exposure and published a medical journal article about Gulf War Illness. He stated that he has testified before Congress in its investigation of Gulf War Illness. CX-3, p. 9.

Dr. Rea stated that he first saw Claimant for a four-day period, beginning on September 18, 2000. Claimant reported that he worked mainly in Riyadh, but went "all over" Saudi Arabia. He reported that he had developed multiple symptoms initially. Approximately one month after the war, Claimant reported that he experienced trouble with concentration, dizziness, memory loss, and fatigue. He added that he was constantly exposed to smoke from the oil fields. Claimant reported developing allergies. Dr. Rea noted that in 1998, Claimant underwent antibiotic treatment, which helped him significantly. Claimant

subsequently developed additional symptoms, including chronic fatigue and joint pain. CX-3, pp. 9-11.

Dr. Rea testified that he ran several tests on Claimant. The first was a computerized balance test performed by Dr. Martinez, an ear, nose, and throat doctor. He recommended this test because Claimant appeared to be imbalanced during the physical examination. He stated that the test was positive for both motor, coordination, and sensory organization. The next tests were the brain mapping and psychological evaluation performed by Dr. Didriksen. He stated that those tests indicated that Claimant was very impaired on his reasoning, judgment, new learning process, visual tracking, tackle performance, attention, and concentration. He opined that these results were consistent with toxic exposure. The next test was a CMI for evaluation of Claimant's immune function, the results of which were compatible with toxic exposure. Dr. Rea testified that Claimant's immunity dysfunction was not caused by an autoimmune problem. He explained that toxic exposure impairs the immune system by essentially paralyzing phagocytosis, T, and B cells. Claimant also underwent an autonomic nervous system evaluation, which was abnormal, and indicated that Claimant had damage to his eyes, head, and heart. Dr. Rea did a complete blood count, which was normal. He discovered blood toxins and chloroform in Claimant's blood. He opined that the chloroform was likely unrelated to exposure in the Gulf War. Dr. Rea also had a brain SPECT scan done, which revealed a salt and pepper pattern. He noted that Claimant was tested for genetic susceptibility to organophosphates by Dr. Furlong. After reviewing Claimant's medical records, Dr. Rea noted that Claimant tested positive for infection with microplasma, a result prevalent in toxic chemical exposure patients. Dr. Rea stated that Claimant's results were indicative of a pattern he found in other Gulf War veterans. He opined that all of these tests indicate toxic exposure in Claimant. CX-3, pp. 11-17, 56, 65.

Dr. Rea testified that he diagnosed Claimant with multiple conditions, including migraine-type headaches, chronic sinus infection, chest pain, Desert Storm Syndrome, irritable bowel syndrome, food allergies, gastroenteritis, fatigue, fibromyalgia, arthralgia, and neuropathy. He gave his conception of Desert Storm Syndrome as a group of symptoms occurring in veterans manifesting as neurotoxicity, short-term memory loss, balance trouble, flu-like syndrome, chronic fatigue, joint pain, and gastrointestinal upset. He stated that this condition is now an accepted syndrome with a definite and common set of ailments or symptoms. However, he conceded that the symptoms do have other causes than toxic exposure. Dr. Rea based his conclusion regarding Claimant's toxic exposure on Claimant's self-reported history that he was stationed within the nerve gas plume without a mask or protective suit. He also based his diagnosis on Claimant's self-reported information that he was in parts of Saudi Arabia where dead animals with no wounds were visible. Dr. Rea added that Claimant was also in an area of a SCUD missile explosion the day after it occurred. He assumed that the missiles had an unidentifiable toxin on them, and that the Khamisiyah explosion also contained toxins. CX-3, pp. 27-29, 35-36, 38-39.

Dr. Rea stated that he solely relied on Claimant's pre-employment physical as proof that Claimant was healthy prior to the Gulf War. He added that the symptoms Claimant complained of, given his age, were rarely caused by anything other than toxicity. He testified that he relied on other doctors' findings which ruled out some other potential causes of Claimant's condition. CX-3, pp. 42-45.

Dr. Rea testified that he saw no evidence of malingering in Claimant. He stated that the symptoms that he described were compatible with the kind of symptoms other ill, Gulf War veterans experienced. He opined that the cause of Claimant's symptoms was exposure in the Gulf War, and stated that these symptoms would impair Claimant from working. He added that Claimant's condition was permanent but that he could improve Claimant's condition through treatment. He stated that he is familiar with the medical research regarding Gulf War illness, and that it is compatible with his conclusion regarding Claimant's condition. He opined that Claimant's condition is deteriorating. He stated that he knew that Claimant has tried to work without any success. CX-3, pp. 19-21, 61.

Dr. Rea outlined a treatment program for Claimant in order to improve his condition. First, Claimant would be taught massive avoidance of toxins in everyday life. Second, he would be given a high nutrient treatment intravenously and orally, consisting of vitamins, minerals and lipids. Third, he would be given injections for the substances to which he has become secondarily sensitive. Fourth, he would do heat therapy. Finally, he would be given immune boosters. CX-3, pp. 60-61.

Francisco I. Perez, Ph.D.⁶

Francisco Perez testified that he is a board-certified clinical psychologist and neurologist. He added that he is also board-certified in pain management and disability assessment. He stated that as a neuropsychologist, he has the additional training to evaluate behavior and cognitive problems that are associated with brain disorders. RX-25, pp. 4-7.

Dr. Perez testified that he reviewed Claimant's records and personally examined him on September 26, 2000. He stated that this examination took approximately an hour and a half, and that Claimant spent the remainder of the day in testing with a psychometrician. Dr. Perez stated that he knew that Claimant reported he had Gulf War Syndrome. He added that he did not claim to be a specialist in Gulf War, nor has he testified before Congress on the illness. Dr. Perez also stated that although he has not treated any patients for Gulf War Syndrome, he has evaluated veterans of the Gulf War with symptoms. He testified that he found no evidence of a brain disorder in the two individuals he examined prior to Claimant. Dr. Perez added that he also reviewed Dr. Didriksen's report. He stated that during the interview, Claimant was difficult to interview and perceived him as "the enemy." He added that Claimant was nonresponsive to many of his questions. Dr. Perez stated that the objectives of his investigation were to look for any symptoms of brain disorder and examine Claimant's psychological presentation. He stated that psychological testing revealed that Claimant exhibited evidence of a "borderline personality feature." He stated that this type of individual tends to blame others for problems, exaggerates symptoms, and uses

⁶The report from Dr. Perez is reproduced as RX-17. This evidence has been considered by the Court in conjunction with Dr. Perez's deposition and will be referred to in the body of the opinion to the extent it adds to his testimony.

symptoms to manipulate others. Dr. Perez stated that the most important component in this assessment is that Claimant has done extensive research for a medical explanation for his symptoms and developed a belief system that he has these symptoms. RX-25, pp. 7-16, 37-39.

Dr. Perez opined that Claimant's borderline personality condition pre-dated his employment with Respondent. He stated that this pattern of behavior is normally established in the late teen years and early 20's. Dr. Perez added that Claimant's drug seeking behavior would be indicative of this type of condition. He affirmatively ruled out exposure to any toxins that manifest as brain disorders. He added that the scores on Claimant's tests were similar to an advanced Alzheimer's patient. He stated that if Claimant's scores were accurate, he would not have been able to hold a simple conversation during an interview. RX-25, pp. 83-87, 91.

Dr. Perez stated that he discovered several inconsistencies in Claimant's testing results that indicated Claimant was exaggerating his symptoms. He stated that in a period of six days, Claimant's memory test results fell from borderline/low average with Dr. Didriksen to severely impaired with him. He added that this was inconsistent with the activities, such as picking stocks, that Claimant reported he engaged in. He opined that these discrepancies, in conjunction with Claimant's performance at the clinic in Stony Brook, New York, indicated that Claimant was doing poorly on purpose. Dr. Perez also stated that since the tests for Dr. Didriksen were performed so close in time to his own, there should have been evidence of a "practice" effect. As a result, Claimant should have done better the second time. RX-25, pp. 27-31, 80.

Dr. Perez opined that several of Claimant's symptoms, such as his claimed sleep disorder, could be attributed to psychological conditions and non-medical in nature. He stated that he only had a few medical records prior to the Persian Gulf War, but stated that some of these records indicated a possible Hepatitis condition, which could cause a person to experience fatigue or insomnia. RX-25, pp. 49-54.

Dr. Perez stated that there was no evidence in either Claimant's neuropsychological tests or Claimant's history to support any type of organic brain disorder. He stated that he arrived at this conclusion by using a systematic theory to arrive at a "differential diagnosis." He opined that it was essential to look at the testing, Claimant's personality assessment, and Claimant's records in order to accurately determine whether there is an impairment. He stated that he reviewed Dr. Nancy Didriksen's report regarding Claimant. Dr. Perez added that she was not board-certified. He stated that in some ways, her testing was similar, but that she had a fundamental flaw in her methodology. He testified that she did not perform any specific tests looking at personality or psychological factors in psychological function. He stated that this was the required approach to doing a neuropsychological evaluation. He added that a neuropsychologist is not able to determine a cause and effect relationship. Dr. Perez added that Dr. Rea's method of "brain mapping" was not fully accepted as a diagnostic procedure by the American Academy of Neurology. He stated that Dr. Rea's conclusions regarding Claimant's behavior would not be supported by a "brain mapping" procedure. He added that the SPECT scan's validity as a diagnostic tool has not been established. Dr. Perez opined that one particular type of test would not indicate toxic exposure, and

that all of the diagnostic studies must be considered together. RX-25, pp. 16-26.

Dr. Perez testified that although it was difficult to evaluate the extent of toxic exposure ten years after the Gulf War, there were specific events during that period which could indicate toxic exposure. He stated that Claimant's pre-war performance and educational achievements would indicate at least average or above average mental capabilities. He stated that Claimant's myriad of mental symptoms were not specific to Gulf War Syndrome, and could be indicative of a psychological disorder. He stated that Claimant's medical records indicated instances of irritable bowel syndrome prior to Claimant's employment in the Gulf. He added that one of the common symptoms for this condition is fatigue. He also stated that the medical records showed that Claimant engaged in "drug seeking" behavior during his employment, consistent with his assessment of a borderline personality disorder. RX-25, pp. 43-46.

He stated that he agreed with Dr. Fiest's evaluation that Claimant may suffer from a manic depressive illness, a medical illness that manifests in psychiatric symptoms. He opined that the illness would explain some of Claimant's symptoms. He stated that although Claimant complained of multiple symptoms, these complaints were non specific to any particular illness. His ultimate conclusion was that Claimant's symptoms were vague, non-specific, general, non-diagnostic, and could be explained by psychological factors. RX-25, pp. 54-60.

On cross examination, Dr. Perez testified that he performs several examinations for insurance companies per month. He stated that his office performs examination for both claimants and defendants. He estimated that his examinations for claimants constituted about 40% of the potential litigants. He stated that 25% of his practice is doing examinations for litigation. Dr. Perez stated that some of the medications Claimant took are chemicals that can produce brain disorders, but that there is absolutely no evidence of a brain disorder in Claimant's case. RX-25, pp. 60-73.

Gary K. Friedman, M.D.⁷

Dr. Gary Friedman testified that he is a board-certified in internal medicine, preventative medicine, occupational medicine, and board-eligible in pulmonology. He stated that he was the Director of Occupational and Environmental Medicine at the University of Texas Medical School. Dr. Friedman added that he established the Toxic Fumes Center to treat inhalation injuries from poison gas and fumes, and is currently an assistant clinical professor at the school. He testified that he treated a large civilian population exposed to poison gases and neurotoxins and participated in government seminars regarding toxic exposure at the request of the Pentagon. Dr. Friedman added that he treated and studied firefighters

⁷The medical report and records from Dr. Friedman and the Texas Occupational Medical Institute are reproduced as RX-18. This evidence has been considered by the Court in conjunction with Dr. Friedman's deposition and will be referred to in the body of the opinion to the extent they add to his testimony.

exposed to oil well smoke in Texas and was asked to present his findings at the CDC Desert Storm technology conference. He stated that Mr. Adair's firm sent approximately twenty-eight of its firefighters to the Persian Gulf, and he either examined or treated most of them. He added that he was also asked to examine certain veterans by the Department of Veterans' Affairs. Dr. Friedman stated that Claimant was the only individual he examined in

connection with Gulf War litigation. He stated that he reviewed medical records for one other individual, but did not personally examine the individual. RX-26, pp. 7-15.

Dr. Friedman testified that he examined Claimant on October 10, 2000, and reviewed extensive records regarding his case. He stated that there were very few medical records pre-dating the Gulf War. He added that he also reviewed the numerous articles submitted at the formal hearing in this case. Dr. Friedman stated that he referred Claimant to both Dr. Francisco Perez, a psychologist, and Dr. Joseph Spindler, a rheumatologist. He concluded that after reviewing their findings, as well as his own, that Claimant did not have Gulf War Syndrome. Dr. Friedman testified that there is no known cause or a single definitive cause for Gulf War Syndrome. Dr. Friedman assigned Claimant a diagnosis of a psychological or psychiatric disorder. He opined that there was no organic disease. Dr. Friedman stated that he was aware of the CDC case definition of Gulf War Illness, but opined that it did not apply to Claimant. RX-26, pp. 16-21, 65, 71, 76.

He testified that Claimant reported a multitude of complaints, which Dr. Friedman found to be vague and varied. He stated that some of the complaints were those that might be seen with Gulf War Syndrome, while others were not common to the illness. He concluded that none of the symptoms could be substantiated on physical examination. Dr. Friedman stated that there were tests that could be done to rule out these symptoms. He explained that fatigue, one of the symptoms in this case, can be caused by a low red blood count. Dr. Friedman stated that Claimant would not allow him to perform any blood studies in order to further explore this symptom. He added that he examined Claimant's joint areas for swelling, heat, or deformity, and found nothing that would cause joint pain. Claimant would not permit any type of additional arthritis diagnostic tests to be performed. Dr. Friedman stated he did have some evidence that similar tests had been performed in the past and were normal. He added that a physical examination revealed no evidence of skin rashes. Claimant's electrocardiogram showed normal heart function. Dr. Friedman also stated that pulmonary function tests, even though Claimant was uncooperative, showed normal function. He opined that Claimant's complaints of dry eyes is completely inconsistent with exposure to organophosphates. As for Claimant's complaints of muscle atrophy, Dr. Friedman described Claimant as a "specimen of health." He noted no significant weight change over the years in Claimant's medical records. Claimant also complained of having Raynaud's disease, which the rheumatologist was unable to document. Dr. Friedman noted that there was no evidence, upon physical examination, of bleeding gums or tooth sensitivity. RX-26, pp. 21-31.

Dr. Friedman added that Claimant typed out his symptoms and brought them into the examination, something he described as an unusual phenomenon. His opinion regarding Claimant's attitude

is that Claimant is helpful when it will promote his case and uncooperative when it is not advantageous for him. Dr. Friedman stated that he was aware that Claimant was completely cooperative with the physicians chosen for him by his own attorney. RX-26, pp. 21-26.

Dr. Friedman opined that Claimant did not suffer from Gulf War Illness for several reasons. Medically, Claimant's test results were not consistent with Gulf War Illness. Claimant did not report that he was exposed to the types of phenomenon that Dr. Friedman had seen in his examinations of Gulf War Veterans and civilians. In particular, Dr. Friedman stated that the oil well firefighters that he examined from Kuwait were exposed to high levels of benzene, while there was only a minimal amount of benzene detected in Riyadh. Additionally, the benzene tests performed on Claimant by Dr. Rea revealed normal benzene levels. Dr. Friedman added that Claimant would not permit these tests to be performed by his office. He opined that some of the medications Claimant listed on his records were also probably causing some of his symptoms. Dr. Friedman added that he disagreed with Dr. Hyman's methods of treating his patients, and opined that his theories involving the causes of Gulf War Syndrome were unsubstantiated. He stated that the continuous antibiotics administered to Claimant had side effects, which could cause some of the reported symptoms. Dr. Friedman added that Dr. Rea prescribed a drug, tryptophan, which has known side effects of muscle pains, fatigue, and skin conditions. He added that this medication would cause peripheral neuropathy, which would explain Claimant's tingling of his hands and feet. He stated that some of the medications that Claimant has used or ordered himself have known adverse reactions with each other. RX-26, pp. 27-37, 46-48.

After examining Claimant's pre-employment physical, Dr. Friedman noted that Claimant denied taking any medications, having persistent headaches, or taking medications. He noted that Claimant's records after the Gulf War, dated March 12, 1992, also show that Claimant denied any medical problems. He concluded that Claimant has an extensive history of being inconsistent in his approach to doctors and questions regarding his health. RX-26, pp. 60-62.

Dr. Friedman listed several other medications that Claimant reported taking, which have side effects similar to the symptoms Claimant alleged. He added that Claimant refused to disclose some of the sources and manufacturers for these medications. Dr. Friedman concluded that each drug on the list, identified as deposition exhibit 3, has a side effect for at least two or more symptoms that Claimant complains of. Dr. Friedman stated that although there were few medical records pre-dating Claimant's employment with Respondent, there was some evidence that Claimant had pre-existing problems both with memory, concentration, and his headaches. He added that there is a family history for most of Claimant's primary complaints, such as joint pain, irritable bowel syndrome, anxiety, chest pain, and allergies. He stated that these conditions have not been diagnosed in Claimant, but that the evidence indicates a strong family history of these conditions. RX-26, pp. 52-54.

Dr. Friedman was questioned regarding several medical reports and documents on Gulf War Syndrome. He agreed that organophosphates were used in insecticides, but disagreed that their mere presence could cause symptoms found in Gulf War Illness. He stated that these studies were not conclusive

on the issue. He added that the studies regarding industrial low dose sarin exposure would not be analogous to a setting in the events following Khamisiyah. Dr. Friedman opined that exposure to both organophosphate insecticides with low level sarin, might have a short-term cumulative effect. He stated that symptoms, such as inability to concentrate, memory problems, and sleep disturbances, would require a much higher level of organophosphate exposure than what Claimant was exposed too. He added that the studies on exposures concluded that even delayed symptoms from sufficient

or repetitive exposure to organophosphates would manifest within four to twenty one days. RX-26, pp. 79-82.

Dr. Friedman stated that he was unable to run any type of SPECT scan on Claimant, because it would have been meaningless given the amount of antidepressants he was taking. While discussing some of the studies performed in this area, Dr. Friedman emphasized the fact that the veterans reporting Gulf War Illness were actually located in combat areas during the Gulf War, whereas Claimant was not. On cross examination, Dr. Friedman conceded that he could not personally presume to know what potential exposures Claimant had in the Gulf, if any, but did state that his findings were not consistent with toxic exposure. RX-26, pp. 83-115.

Dr. Friedman agreed that there seemed to be a higher rate of illnesses reported among people within the nerve gas plume from Khamisiyah during the fighting. He added that the numbers of illness were significantly lower for people not directly in Khamisiyah. He stated that Claimant expressly disclaimed being in any areas where there had been air raids, bombing, or SCUD attacks. Dr. Friedman agreed with the theory that some individuals have a genetic susceptibility to organophosphates, but stated that Claimant did not possess this significant degree of susceptibility. He pointed out that statistically 40% of the population have the same type of genotype as Claimant, and that presumably more individuals in his camp like him would have manifested symptoms. He added that the paraoxonase production rate was reported inconsistently with Claimant, further diminishing the reliability of the tests. RX-26, pp. 116-141.

Edward Sidney Hyman, M.D.⁸

Dr. Hyman testified by deposition that he practices in internal medicine. He stated that he intended to present a paper on a government-funded study regarding Gulf War Syndrome and its treatment. He stated that he treated about fifty-four individuals who spent time in the Persian Gulf during the war. Dr. Hyman testified that he first examined Claimant on January 30, 1998. He stated it was his understanding that Claimant was in good health prior to working in the Persian Gulf area. Dr. Hyman described his

⁸The available medical reports and records from Dr. Hyman's study are reproduced as CX-2. This evidence has been considered by the Court in conjunction with Dr. Hyman's deposition and will be referred to in the body of the opinion to the extent it adds to his testimony.

research as consisting of developing a successful treatment for Persian Gulf Syndrome. CX-5, pp. 17-27.

Dr. Hyman examined and treated Claimant on March 6, 1998 through March 23, 1998 as part of his study. He stated that he knew Claimant had not served in the military, but did not know exactly what Claimant's job was in the Persian Gulf. He added that he assumed Claimant was in Saudi Arabia during the actual war. Dr. Hyman also stated that he was not told of any particular exposures which might have been harmful to Claimant. Dr. Hyman testified that he reviewed Claimant's medical records from 1995 and 1996, which focused mainly on Claimant's sinus problems. He testified that Claimant was assessed in Stony Brook New York, and that he used the data results from the project in his own study. He stated that Claimant volunteered for the study following a presentation given in Atlanta, Georgia. He added that this presentation was given sometime before January, 1998. Dr. Hyman testified that prior to his participation in the study, Claimant was required to send a urine sample by mail to his office. Dr. Hyman notes that Claimant was classified as a thirty-six year old Desert Storm veteran. Claimant reported that his fatigue began in 1991, with short term memory loss occurring in 1992 and 1993. He added that anxiety followed along with sinus infections and periodic tachycardia. Dr. Hyman stated that Claimant was taking numerous medications. He added that Claimant had no known allergies, but took medications for allergies. CX-2, p. 62, CX-5, pp. 45-46, 54-58, 69-73.

Dr. Hyman testified that Claimant's symptoms were compatible with those he had seen in other Gulf War veterans. He stated that he had to approve the candidates for his study as having sufficient findings of certain symptoms. He gave a 95% probability that Claimant's symptoms were caused or related to something that he was exposed to during the Persian Gulf War. Dr. Hyman stated that Claimant exhibited a genotype of a certain germ in Saudi Arabia that may have contributed to his illness. He gave his conception of Gulf War Illness as a manifestation of a disease occurring due to bacteria. He stated that the symptoms Claimant complained of were confined specifically to this type of disease, including cluster headaches and joint pain. He added that he treated approximately fifty-eight patients for Gulf War illness. Dr. Hyman opined that Gulf War illness was different from exposure to sarin gas or smoke disease, because the clinical patterns were different. He opined that although Claimant's condition improved at the four-month point in the study, he was not able to afford similar medications after the study. Dr. Hyman stated that Claimant reported suffering a relapse when he went off of the medication. He stated that the funding for the study was not for continually treating the sick veterans. He added that he did not believe that Claimant was totally disabled, and that he could have significant improvement through intense treatment. Dr. Hyman opined that Claimant would be fit to do some type of limited manual labor. CX-5, pp. 36-45, 76-77.

Dr. Hyman noted that Claimant experienced right frontal headaches. His eyes appeared to be dry and red with swollen lids. He reported a sinus infection with no symptoms detected in the glands. Claimant's GI tests were negative. Dr. Hyman noted that Claimant reported minimal rashes since his return from the Saudi Arabia. He added that Claimant's skin was clear except for a few tiny pustules. An electrocardiogram was normal. Dr. Hyman opined that Claimant had the Desert Storm syndrome, but that it was only mild in severity. His secondary diagnosis was indolent gram positive bacteremia, chronic fatigue

syndrome, memory loss, and “other complaints.” Dr. Hyman reported that the patients in this study were randomly selected for treatment, and that Claimant was one of those patients. He noted that Claimant was given an intravenous infusion of vitamins and antibodies. Dr. Hyman’s discharge diagnosis was indolent bacteremia, polymyalgia rheumatica, Sjogren’s syndrome (dry eyes), recurrent fever, and regional alopecia related to Desert Storm Illness. CX-2, pp. 63-66.

Dr. Hyman testified that without treatment, Claimant’s condition might or might not get worse. He stated that every time Claimant gets some sort of treatment, his condition seems to improve. He added that some of the medications Claimant took on his own were inappropriate for his symptoms. He diagnosed Claimant’s condition as systemic coccidiosis. He conceded that some types of this bacteria are fairly common in the United States’ population. He added that he associated Claimant’s bacteria with the Persian Gulf, because Claimant became ill while he was there. He took Claimant for the study based on his self-reported symptoms. He reported that after Claimant’s hospitalization and treatment, Claimant said that he was subjectively feeling better. Dr. Hyman stated that his urine (which was tested on a serial basis) looked better also. He added that Claimant returned May 18-22, 1998, in order to get one week of antibiotics at his office. He stated that he was not specifically aware of what cognitive problems Claimant had. CX-5, pp. 47, 83-84, 88, 105-106, 110, 120-121.

2. REPORTS & RECORDS

Pre-Employment Physical

Claimant was given a physical prior to his employment with Respondent. The pre-employment physical was given on August 8, 1989. Dr. Mark E. Wiltshire examined Claimant on that date and determined that Claimant had a normal physical examination and was in good health. Claimant disclosed that he did experience sinus problems and had a family history of arthritis. The subsequent report with the complete laboratory testing, dated October, 1999, noted that Claimant exhibited no signs of chest diseases or communicable diseases, such as Tuberculosis or Malaria. No health problems were noted. RX-11, pp. 1-2; CX-1, pp. 1-15.

State University of New York Health Sciences Center, Stony Brook, N.Y.

Records from the Center indicate that Claimant was a participant in a government-funded study on Gulf War Illness. Claimant was randomly selected to receive treatment. The records state that of the first 18 patients treated in the study, 13 improved dramatically. The records note that the civilians, including Claimant, were less responsive to treatment than military personnel. CX-57, pp. 3-4.

Records show that Claimant was first examined on February 18, 1998 with a four month post-treatment reevaluation on July 15, 1998. At the post-treatment evaluation, Claimant reported that he improved 50% generally, and improved as to his fatigue. He reported that his thinking was not as

improved, but that he had a better outlook on things. He noted that his joint pain was still a major problem, and was becoming worse in his hand. CX-57, pp. 4-6.

Claimant filled out a screening questionnaire on February 19, 1998, prior to participating in the study. The form indicates that Claimant was identified in the study by his initials and a patient number in order to preserve the integrity of the study. The form submitted was for patient number 37. This form notes that Claimant reported that he had been discharged from the U.S. Army, and noted that he was a regular member of the army when he was deployed to the Persian Gulf. Claimant also noted that he was exposed to oil fire smoke during the war. He gave his date of deployment as November, 1989 to January, 1992. Claimant also underwent a neurological evaluation, dated July 14, 1998, which indicated no abnormalities. CX-57, pp. 11-12, 24-30.

On July 14, 1998, Claimant also filled out a final evaluation packet in which he disclosed that he experienced headaches approximately two to three times per week, which were relieved by over-the-counter medication. Additionally, he disclosed that he still did not have normal bowel habits, but did not have diarrhea anymore. His skin was reported as normal. CX-57, pp. 32-33.

Vinnell Corporation, Medical Department and Riyadh Medical Center

Records from Respondent's medical center show that Claimant missed four days in 1989 due to illness/injury. RX-11, pp. 4-6. These records indicate that Claimant was on sick leave for two days in 1990. RX-11, pp. 23-24. He was granted two weeks off for recuperation and took fourteen days sick leave in connection with his broken arm from January 25, 1991 to February 7, 1991 for his broken arm. RX-11, p. 27.

Claimant was seen by Dr. Ammari at the Riyadh Medical Center on January 4, 1990. Dr. Ammari's diagnosis was that Claimant suffered from cluster migraines, which were nonresponsive to inderal and analgesics, as well as irritable bowel syndrome. He complained mainly of neck pain. A follow-up x-ray and upper GI examination yielded normal results, and he was treated by physiotherapy for five days. RX-11, pp. 9-12, 15-16.

Claimant was seen for gastrointestinal difficulties in February, 1991. The upper GI tests, taken on February 9, 1991 show no evidence of malfunction other than possible early diverticuli formation. Claimant was seen at the Riyadh Medical Center on March 3, 1991 complaining of post-fracture muscle atrophy in his right forearm. He was treated by physiotherapy for ten days. RX-11, p. 25.

Claimant was referred to Al-Hammadi Hospital in October, 1991, complaining of pain to the right testis. The physician noted no urinary symptoms. The examination report indicated that the area was in good general condition. He was given Cefuroxim for one week. RX-11, pp. 37-39.

Vinnell Corporation Medical Dispensary

Records from Respondent's Medical Dispensary show that Claimant requested medication and treatment numerous times over the course of his employment. In November, 1989, records indicate that he complained of nausea, cluster headaches, and irritable bowel syndrome. He disclosed a history of cluster headaches and requested a special food allowance with no medical necessity. RX-12, p. 1. These records indicate that in January, 1990, Claimant complained of cluster migraines and stated that he required anti-depressant therapy. The examiner noted that Claimant complained of multiple somatic complaints with a strong tendency for self-diagnosis and self-treatment. He later requested oxygen therapy for his migraines and brought Percodan with him from the United States. Claimant requested Valium on occasion. A note on January 10, 1990, indicated that Claimant was visiting the dispensary twice a day, and that he had a marked tendency for psychological dependence on medications. Dr. Ammari reported that Claimant's complaints stayed the same throughout January and that Claimant continued to use self-administered medications. On January 27, 1990, Claimant requested an anti-diuretic drug to keep his blood pressure elevated. A notation was made that this request made no medical sense. In February, 1990, the examiner noted that Claimant complained of irritable bowel syndrome, which was probably induced by Claimant's multiple medications. In April, 1990, Claimant was prescribed Zantac. RX-12, pp. 2-7.

Student Health Services, University of Alabama at Birmingham

Records from the student health center, dated April 4, 1989, show that Claimant was seen for complaints of chest pain. On the patient questionnaire, Claimant reported no medical problems and stated that he had not consulted with a physician within the preceding five years. He reported that he was taking no regular medications, nor did he take any in the past. Claimant reported that he had no family history of illnesses. A physical examination revealed that Claimant's skin, teeth, nose, lungs, and chest were normal. The examining physician noted that Claimant's muscle strength appeared to be normal. RX-13, pp. 1-5.

Claimant was also seen on March 9, 1992 at the Student Health Center. A physical examination, performed by Dr. Franklin Murphy, revealed that Claimant's skin, teeth, nose, lungs, and chest were normal. Dr. Murphy noted that Claimant's muscle strength appeared to be normal. He was subsequently seen on August 3, 1992, complaining of chest pain whenever he exerted himself. The physician notes no family history of cardiovascular disease. Test results performed on that date showed normal lung and chest function. RX-13, pp. 13-14.

Records of Charles Boackle, M.D.

Claimant was seen by Dr. Charles Boackle on numerous occasions between June 29, 1992 and December 30, 1993. On June 29, 1992, Claimant initially complained of abdominal pain, headaches, and nausea that he attributed to stress. He self-reported a history of cluster headaches, diverticulosis, and anxiety/depression. Records indicate that Claimant reported problems concentrating, palpitations, chronic tinnitus, allergies, muscle cramps, and cold feet and hands. Claimant reported that he had taken Buspar for two months. RX-14, p. 4, CX-2, p. 6.

Dr. Boackle's assessment was a probable irritable colon and probable mitral valve prolapse. The July 13, 1992 records indicate that Claimant still reported problems with concentration and motivation. Dr. Boackle subsequently diagnosed him with probable depression and prescribed a trial period with Prozac. Clinic notes indicate that Claimant was concerned that he might have Attention Deficit Disorder. RX-14, pp. 5; CX-2, pp. 6-7.

On December 16, 1993, Claimant was seen for complaints of chest pain, tenderness of the genitalia, and bilateral knee pain. A physical examination revealed that Claimant's chest function was normal with no tenderness and normal heart function. Dr. Boackle's assessment was that Claimant's chest pain was atypical given that his EKG was normal. RX-14, pp. 8-9; CX-2, pp. 8-9.

Norwood Clinic

Department of Internal Medicine and Ophthalmology Department

On November 22, 1995, Claimant was seen by Dr. Marc Michelson in the Ophthalmology Department complaining of cluster headaches and chronic sinus infections. In March, 1996, Claimant complained of occasional blurriness in his sight and opined that this could be caused by dryness. CX-2, pp. 23-28.

Claimant was seen by Dr. G. Bryan Dewees, III at the Norwood Clinic on May 22, 1996. Claimant's chief complaints were stomach and joint pain. Claimant reported that he had pain and swelling in his hands, feet, and left shoulder. He reported allergies to pollen and dust. Claimant reported that his mother had arthritis and took Naprosyn. He also reported that his mother had an anxiety syndrome, accompanied by chest pain and tension. A physical examination revealed that Claimant was well-developed and normal. Claimant's skin was described as normal. Dr. Dewees noted that the lateral flexion of the cervical spine was reduced. Claimant's left shoulder was slightly limited in movement. Claimant was seen on several other occasions with similar complaints. Dr. Dewees noted that Claimant exhibited grade 1 osteoarthritic changes of the hand joints and bilateral tenderness. His assessment was polyarthralgias, bursitis in the left shoulder, metatarsalgia, and allergies. Dr. Dewees reported that he wanted to rule out irritable bowel syndrome. Upon further testing of Claimant's joints, no radiographic abnormalities were identified. RX-15, pp. 5-6, 16-18; CX-2, pp. 38-42.

In October, 1997, Claimant was seen at the Ophthalmology department for the same complaints. He added that his eyes were sore to touch, and that he had arthritis, joint pain, and fatigue. A progress report, dated July 7, 1998 indicates that Claimant was still complaining about his eyes being extremely dry. This progress note indicates that Claimant had Gulf War Syndrome. Additionally, punctal plugs were inserted into Claimant's eyes in order to relieve the dryness. CX-2, pp. 33-34.

Biomed Medical Center

Notes from this center indicate that Claimant was seen on January 20, 1997 and May 7, 1997. He complained of fatigue, anxiety, depression, joint pain, and muscle fatigue. The examiner noted that Claimant had osteoarthritis, both generalized and severe, along with fibromyalgia. CX-2, pp. 57-60.

Records of Fredric W. Feist, M.D.

Dr. Fredric Feist, psychiatrist, examined Claimant on May 29, 1996 and prepared a report following this examination. Claimant described himself as having anxiety with depression, irritable bowel syndrome, and joint problems. He disclosed a family history of arthritis, GI problems, and anxiety. Dr. Feist reported that Claimant has had problems since he was fourteen years old and has had trouble concentrating since high school. Claimant disclosed taking medications from his family doctor including Buspar, Xanax, and Prozac. Claimant reported working in Saudi Arabia from 1989 to 1992, and added that he “felt miserable” while working there. Dr. Feist prescribed Depakote, which was later replaced by an anti-depressant, Effexor. On July 1, 1996, Claimant reported that the medication made him unable to sleep and nauseous, so Dr. Feist changed the medication to Prozac, Desyrel, and Buspar. Claimant was last seen on September 18, 1996, where he related that he was taking the Prozac, but had trouble sleeping. RX-16, pp. 1-2; CX-2, pp. 34-36.

Dr. Feist’s Axis I diagnosis was cyclothymic disorder and generalized anxiety disorder with depression. His Axis II diagnosis was to rule out avoidant personality disorder. He listed stressors as Claimant’s health problems and occupational stress. RX-16, p. 3; CX-2, pp. 34-36.

Records of Joseph S. Spindler, M.D.

Dr. Spindler, rheumatologist, examined Claimant on September 27, 2000. Claimant reported swollen eye lids, dry eyes, cold hands and feet, anxiety, bloating, poor sleep, lack of appetite, weakness, mental dullness, multiple joint aches, poor coordination, painful feet, occasional rashes, numbness and tingling, general malaise, and fatigue. Dr. Spindler examined Claimant and reviewed his medical records up to that date. He noted that although Claimant was cooperative on the physical examination, he would not consent to laboratory evaluation or x-rays. Claimant reported that he had enough lab work and x-rays taken and did not feel that it would contribute anything to his diagnosis. He noted that Claimant had a tendency to diagnose and treat himself. Dr. Spindler opined that Claimant’s current condition was compatible with irritable bowel syndrome, depression, anxiety, and dry eyes. He stated that treatment should be directed at both achieving control of gastrointestinal pathophysiology and searching for an underlying psychological or social factor that would contribute to his condition. Dr. Spindler performed a literature search of the National Library of Medicine and concluded that there was no credible evidence to conclude that the following aetiological factors would contribute to irritable bowel syndrome – sarin gas, environmental toxins, pesticides, depleted uranium, or smoke inhalation from oil well fires. RX-19, pp. 1-4.

Report of Nancy Didriksen, Ph.D., Health Psychologist

Dr. Didriksen's report notes that she examined Claimant on September 20 and 21, 2000, and completed a neuropsychological consultation based on her findings. The description and behavioral observations in this consultation describe Claimant as having normal speech quality and good posture while sitting. Dr. Didriksen noted that Claimant's motor activity was slowed with fair balance during walking. She added that he was unable to stand on either foot with his eyes closed. Her report describes Claimant as oriented for place, and person, but not well-oriented as to time. He was alert and cooperative, if somewhat anxious. CX-4, pp. 2-3.

Dr. Didriksen noted that no fluctuations were observed in the affective sphere. Claimant's mood was reported to be dysphoric, depressed, and angry. She reported that the affect appeared restricted but was generally appropriate to stimuli at all times. She noted that no disorders of thought were immediately apparent. Claimant reported fluctuating neurocognitive deficits. He reported primary stressors to be illness and disability. Claimant reported joint pain and anxiety during the evaluation as well as a slight headache. Dr. Didriksen noted pain behaviors during movement. She concluded that Claimant put forth his best effort with no evidence of malingering. CX-4, p. 3.

Claimant reported his primary complaints to be fatigue, joint pain, headaches preceded by sinus infections, neurocognitive defects, Sjogren's syndrome, Reynaud's syndrome, mycoplasma, and numbness in hands and feet. He reported numerous other symptoms on the Physical Symptom Checklist. CX-4, p. 4.

On the Psychological Symptom Checklist, Claimant noted irritability, negation of joy, inability to cope with daily stressors, difficulty getting started in the morning, feelings of being loved or unlovable, free-floating anxiety, loss of control, and mood swings. He reported his feelings of stress as an 8 on a 0 to 10 scale. Claimant reported that his balance and coordination problems included unexpectedly dropping items, as well as reaching for objects and missing them. On the neurocognitive symptom checklist, Claimant reported decreased attention, concentration, immediate and short-term memory loss and comprehension, confusion, and occasional expressive and receptive speech difficulties. Claimant reported his past medical history as being in general good health, both mentally and physically, throughout his life. He stated that he initially experienced diarrhea, gas, and bloating while serving in the Persian Gulf, but the symptoms were controlled with Zantac. He listed his current medications as Placidyl, Ambien, Chloral Hydrate, Imitrex, Tylenol, and aspirin. CX-4, pp. 4-6.

Dr. Didriksen also reviewed Claimant's medical records. These records included Claimant's pre-employment physical, the records of Dr. Boackle, University of Alabama Student Health Services, Dr. Michelson, Dr. Feist, Dr. Dewees, Dr. Hyman, and the Institute of Molecular Medicine. She also administered a battery of tests. She concluded that Claimant's age-corrected subtest scores on the Wechsler Adult Intelligence Scale-Revised ranged from low-average to high-average. Claimant scored at the lowest limit in numerical reasoning, problem solving ability, short-term, concentration and auditory

sequencing. He scored in the high-average range in long term memory, general retention of information, and general learning ability. He scored at the population mean in the ability to observe inconsistencies and attention to details. His verbal IQ fell in the average range and exceeded forty-seven percent of his peers. His performance IQ score of 88 fell into the low-average to average range and exceeded twenty-one percent of his age peers. Dr. Didriksen opined that the difference between his verbal and performance IQ was significant but not necessarily abnormal. CX-4, pp. 6-8.

After comparing these scores to Claimant's age, sex, and educational peer group, Dr. Didriksen concluded that his IQ scores and the majority of his subtest scores fell into the impaired range. She noted that he was most impaired in attention, concentration, numerical reasoning, visual sequencing, and perceptual-motor learning. CX-4, pp. 7-8.

Claimant's scores on the Wechsler Memory Scale III ranged from borderline to low average. She noted that incidental memory deficits were apparent. She noted that Claimant's scores on prior neuropsychological evaluations were within normal limits, but she could not compare them with the present scores because different instruments were used. She added that this test is used in a core group of tests to detect sensitivity from neurotoxic effects. Dr. Didriksen concluded that Claimant's score on the General Neuropsychological Deficit Scale during the Halstead Reitan Neuropsychological Test Battery indicated moderate impairment of brain-related abilities. She stated that the majority of patients exposed to neurotoxic substances scored in the mildly impaired range. She noted that three of the five most sensitive indicators of impairment fell into the severely impaired range, and the remaining two fell into the mild to moderately impaired ranges. CX-4, pp. 10-11.

She noted impairment in all measures of general neuropsychological functioning of the Halstead-Reitan Neuropsychological test battery. All measures of sensorimotor/psychomotor functioning fell into an impaired range. Additionally, his scores indicated dysfunction in both hemispheres. CX-4, p. 12.

In evaluating Claimant's personality profile, Dr. Didriksen noted that Claimant appeared to suffer from a strong degree of depression and anxiety associated with physical malfunctioning. She also noted that a significant compromise of self-confidence, self-esteem, and coping ability was suggested. Claimant appeared not to want to live in his present condition. CX-4, p. 10.

Dr. Didriksen concluded that Claimant was significantly impaired on those functions most necessary for effective and efficient workplace functioning, as well as effective and efficient everyday functioning. She added that Claimant was evaluated in an environment relatively free of toxins and under conditions of reduced stress. Dr. Didriksen noted that Claimant's test results were consistent with his self-reported history and consistent with others evaluated by her office after serving in the Persian Gulf. She noted that Claimant appeared to put forth his best effort at all times with no evidence of malingering. CX-4, p. 10.

Anniston Medical Clinic

Claimant was seen by Dr. C. K. Jin for a disability physical on March 26, 1999. The doctor noted that Claimant had multiple complaints including chronic fatigue, irritable bowel syndrome, back pain, occasional chest pain, Sjogren's syndrome, Raynaud's phenomenon, frontal headaches, and difficulty sleeping. He disclosed that he was exposed to organic phosphates and Iraqi nerve agents. He reported being told that he had a chemically-induced immunodeficiency. He stated that his mother died of a brain tumor. A review of Claimant's systems indicated, in relevant part, that he had dizziness and headache and some evidence of a rash on the hands. A physical examination noted that Claimant was well-developed, fairly well-nourished, cooperative, and oriented. Dr. Jin's final diagnosis was chronic fatigue syndrome. Dr. Jin opined that it was possible that his immune deficiency was chemically induced due to Gulf War Syndrome. Dr. Jin noted that Claimant might also

be a little psychotic. The doctor noted that it was impossible to pinpoint anything specifically as to Claimant's condition and notes that physically, Claimant had no evidence of organic disease. CX-67, p. 2

Clement Furlong, Ph.D., University of Washington, Dept. of Medicine and Genetics

Clement Furlong submitted a report, dated May 16, 2000, on the genetic susceptibility of Claimant to toxin exposure. The report indicates that Claimant is a heterozygote. In his report, he opined that Claimant is more genetically susceptible to Sarin nerve gas and other organophosphate exposures than the average person. The average person has 630 units/liter of paraoxonase activity, and testing revealed that Claimant has 980 units/liter. He stated that Claimant was in the 80th percentile with respect to the paraoxonase activity. Dr. Furlong opined that Claimant was in the ninety-first percentile of the population with respect to paraoxonase activity. Dr. Furlong noted that Claimant was above average with respect to resistance to an exposure to chlorpyrifos oxon and diazoxon. He hypothesized that Claimant would probably below average with respect to resistance to soman and sarin. CX-68, pp. 3-5.

III. OTHER EVIDENCE

1. MAPS

Respondent submitted several maps of the Persian Gulf War area. The maps were submitted as RX-1 and RX-21 through RX-24. These maps were marked by both parties at the formal hearing in order to identify where the various Gulf War battles and air strikes occurred. This Court has examined all of the maps in the record and will refer to them in the body of this opinion as relevant.

2. EMPLOYMENT RECORDS

Respondent submitted employment records detailing Claimant's job title, periods of employment,

vacation time, and rate of pay while with Respondent. RX-5; RX-6; RX-8. These records note that Claimant was employed in the following positions from his starting date to his contract completion date. RX-10, p. 16.

11/2/89	to	10/31/90	Senior Instructor – Trauma
11/1/90	to	12/31/90	Procurement Assistant
1/1/91	to	12/21/91	Adviser – Curriculum Division/Revision

These records also note that Claimant was away from his post in Riyadh during the following periods of time. RX-7; RX-9.

1/2/90	to	2/15/90	45 days to support a Reconnaissance Operation
8/9/90	to	8/10/90	2 days authorized leave to Bahrain

8/31/90	to	9/16/90	17 days to eastern province of Saudi Arabia
12/23/90	to	2/28/91	67 days for vacation/home leave and retroactive sick leave
8/9/91	to	8/12/91	4 days authorized leave to Dubai
9/12/91	to	9/14/91	3 days vacation in Jeddah, Saudi Arabia

3. PERFORMANCE EVALUATIONS

Performance appraisals from Respondent show that on January 1, 1990, Claimant received a “good” rating in all aspects of his job performance as a senior instructor in trauma. This rating was three levels below “outstanding” and one level above “unsatisfactory.” RX-10, p. 1-2. At that time Harlan Baker, the personnel reviewer, recommended that Claimant be released at the end of the 90-day trial period. Mr. Baker stated that although Claimant was knowledgeable in his area of expertise, he had a record of “riding the sick book.” He noted that instructors must show up to teach the classes. He gave Claimant’s overall attitude as demanding of supervisory support, thankless when this support was given, and unwilling to give management support. Mr. Baker, in review of the performance evaluation given by Claimant’s supervisor, assessed Claimant’s productivity as marginal. RX-10, p. 3. Attached to this performance appraisal is a handwritten statement from Claimant, disagreeing with the performance assessment and claiming that the evaluation was based on personal animosity. RX-10, p. 4.

Another evaluation by Claimant’s supervisor, dated April 10, 1990, indicates that Claimant improved with respect to his attitude. The evaluation noted that the supervisor was still concerned about his residual resistance to authority. This report noted that Claimant’s health continued to play a role in his

day-to-day performance. In particular, the report pointed out that Claimant's prescribed medication caused him to become marginally functional while on the job. Claimant's supervisor recommended periodic evaluations. RX-10, pp. 7-13.

Claimant's July 25, 1990 evaluation indicates that he received "outstanding" to "superior" ratings in all aspects of his job performance. RX-10, pp. 13-14. Claimant transferred to an advisory position on November, 1, 1990 after his offer for continued employment with the instructor position was withdrawn. In this advisory position, he received both "superior" and "good" ratings in his evaluation on July 27, 1991. His one "good" rating was given in the category of cooperation. RX-10, pp. 20. A subsequent evaluation on September 24, 1991 notes that Claimant's revisions for the company contained several errors and demonstrated a lack of progress. Claimant's supervisor indicates that Claimant became disinterested in his job after he received his renewal contract. He also noted that Claimant demonstrated a constant inability to follow established guidelines and procedures. RX-10, pp. 22-24. On October 28, 1991, Claimant's offer of continued employment was withdrawn. Respondent cited Claimant's substandard productivity as the basis. RX-10, pp. 25-29.

4. MEDICATION LIST

Claimant submitted a typed list containing numerous medications, some prescribed and some over the counter, that he has taken since returning from the Gulf War area. This Court has considered this evidence and will refer to it in the body of the opinion as relevant. CX-63.

5. VIDEOTAPE

Claimant submitted a videotape containing clips of the 60 Minutes television show on the Persian Gulf War. This particular show outlined events during the Gulf War and its effect on the individuals in the Gulf War area. This Court has considered this video as it relates to Claimant's case regarding his injury and will discuss it in the body of the opinion. CX-66.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon the Court's observations of the credibility of the witnesses who testified at the hearing and upon an analysis of the entire record, applicable regulations, statutes, case law, and arguments of the parties. As the trier of fact, this Court may accept or reject all or any part of the evidence, including that of expert medical witnesses, and rely on its own judgment to resolve factual disputes and conflicts in the evidence. See Todd Shipyards v. Donovan, 300 F.2d 741 (5th Cir. 1962). In evaluating the evidence and reaching a decision, this Court applied the principle, enunciated in Director, OWCP v. Maher Terminals, Inc., 115 S. Ct. 2251 (1994), that the burden of persuasion is with the proponent of the rule. The "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, will not be applied, because it violates section 556(d) of the Administrative Procedures Act. See Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114

S.Ct. 2251, 129 L.Ed. 221 (1994).

FACT OF INJURY AND CAUSATION

To establish a prima facie claim for compensation, a claimant does not need to affirmatively establish a connection between the work and the harm. Section 20(a) of the Act, 33 U.S.C. §920(a), provides the claimant with a presumption that his injury was causally related to his employment if he establishes two things. First, the claimant must prove that he suffered a physical injury or harm. Second, he must show that working conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the injury. See Gencarelle v. General Dynamics Corp., 22 BRBS 170 (1989).

1. CLAIMANT'S SHOWING OF A HARM

The first prong of a claimant's prima facie case requires him to establish the existence of a physical harm or injury. The Act defines an injury as the following:

accidental injury or death arising out of and in
the course of employment, and such occupational disease
or infection as arises naturally out of such employment or
as naturally or unavoidably results from such accidental
injury, and includes an injury caused by the willful act of
a third person directed against an employee because of
his employment.
33 U.S.C. § 902 (2).

An accidental injury occurs when something unexpectedly goes wrong within the human frame. See Wheatley v. Adler, 407 F.2d 307 (D.C. Cir. 1968). Additionally, an injury need not involve an unusual strain or stress, and it makes no difference that the injury might have occurred wherever the employee might have been. See Wheatley; Glens Falls Indemnity Co. v. Henderson, 212 F.2d 617 (5th Cir. 1954). The claimant's uncontradicted credible testimony may alone constitute sufficient proof of physical injury. See Hampton v. Bethlehem Steel Corp., 24 BRBS 141 (1990); Golden v. Eller & Co., 8 BRBS 846 (1978), aff'd, 620 F.2d 71 (5th Cir. 1980).

In this case, Claimant alleges that he sustained exposure to toxic substances while employed by Respondent during the Gulf War in Saudi Arabia from November 2, 1989 through December 21, 1991.

He testified that he suffers from rashes, chronic fatigue, chronic headaches, joint pain in multiple joints, muscle pain, chest pain, night sweats, numbness in hands and toes, stomach pain, occasional inability to control bowels or urinary function, chronic constipation or diarrhea, dizziness, disorientation, extreme depression, difficulty concentrating, short-term memory loss, chronic moodiness and irritability, problems handling stress, sleep disorders, and sensitivity to chemicals. *See* TR. 30-41. He claims that these

symptoms are evidence of Gulf War Syndrome, a chronic, multi-symptom condition.

The Center for Disease Control's 1998 case definition of "Gulf War Illness" is, "a chronic multi-symptom illness." *See* CX-7. To have Gulf War Illness, one or more of the listed chronic symptoms must manifest for six months or more. These list categories are fatigue, mood/cognition (including feelings of depression, difficulty remembering or concentrating, feeling moody, anxious, trouble finding words, or difficulty sleeping), and musculoskeletal (symptoms of joint pain, stiffness, or muscle pain). *See* CX-7. Claimant alleges that he suffers from symptoms in all three of the CDC's categories. He maintains that his these symptoms have manifested both during and since his return from Saudi Arabia in December, 1991, well over the case definition's minimum six-month period.

This Court finds Claimant's testimony regarding his physical and mental health problematic in many respects. The evidence presented by both parties indicates that Claimant displays an inability to accurately relate his health condition, mental condition, and family history to the various physicians that he has seen both during and since his employment in the Persian Gulf. As to his health prior to his employment with Respondent, Claimant testified that he was in excellent physical and mental health prior to the Gulf War. *See* TR. 27-30. He disclosed no family history of illness on his pre-employment physical form, although later he revealed that anxiety attacks and arthritis were present in his family. *See* RX-11; CX-1. Even after his employment with Respondent ended, he continued to inconsistently relay his family history and his symptoms to physicians. *See* RX-26; CX-2.

Most problematic to this Court is that the tendency to be uncooperative and inconsistent is focused primarily on the physicians that Respondent referred him to for examination. First, Dr. Friedman noted that Claimant would not allow him to perform any type of blood test for diagnostic purposes. *See* RX-26, pp. 21-22. Dr. Perez, a psychologist, also noted that Claimant was uncooperative and specifically stated that he was "the enemy." *See* RX-25, pp. 7-16. The record also contains evidence that Claimant's complaints became more consistent after he attended a conference on Gulf War Illness in 1997, and that Claimant began producing a typed list of multiple symptoms on his doctor's visits. *See* TR. 48-51; RX-26, pp. 21-31. Therefore, it is evident to this Court that Claimant's testimony regarding his injuries and symptoms contain major inconsistencies, further diminishing his credibility.

This Court also finds that the evidence indicates strong evidence of malingering. Records from Respondent's medical dispensary indicate that Claimant requested medication to the point that he needed to be watched. *See* RX-12, pp. 2-7. Throughout his employment, he complained of symptoms that could not be established through medical testing. *See* RX-11; RX-13. Dr. Ammari also noted that Claimant would request medication which was inappropriate to treat his claimed symptoms. *See* RX-12, pp. 2-4. Although Dr. Ammari did report that Claimant consistently complained of irritable bowel syndrome, he opined that it was probably induced by Claimant's multiple medications that he took. *See* RX-12, pp. 2-7. Claimant was also described by his supervisor as someone who "rode the sick book." *See* RX-10. Claimant consistently demonstrated this tendency to self-diagnose problems and self-medicate both during and after his employment with Respondent. Therefore, this Court finds that this evidence, when combined with Claimant's tendency to change his symptoms depending on the examining physician, weighs against

his credibility. Thus, this Court finds Claimant's testimony is only credible to the extent that it supported by the medical evidence in the record.

After considering the medical records and reports, this Court finds that Claimant does suffer from a psychological disorder and physical symptoms of irritable bowel syndrome and chronic headaches. However, while this Court finds that Claimant does suffer from a mental condition, the medical evidence indicates that it is psychological, as opposed to organic, in nature. Dr. Didriksen concluded that Claimant suffered from neurocognitive impairment, resulting in a diminished IQ and short term memory loss, among other symptoms. *See* CX-4. However, this Court places determinative weight on Dr. Perez's opinion that Claimant suffers from a non-organic psychological condition manifesting in psychiatric symptoms. *See* RX-25. Although Dr. Didriksen has examined many Gulf War veterans in the course of her practice, this Court finds that Dr. Perez's opinion is entitled to greater weight given that he is a board-certified in both clinical psychology and neurology.

As to Claimant's physical symptoms, he has sufficiently proven from the medical evidence that he suffers injury in the form of cluster headaches and irritable bowel syndrome. Claimant's history of chronic headaches and gastrointestinal difficulty have been consistently reported to the majority of his physicians throughout his employment. *See* RX-26; CX-5; RX-11, RX-14. He testified that he began experiencing bowel problems while he was in Saudi Arabia, which is supported by the dispensary records and Dr. Ammari at the Riyadh Medical Center. *See* RX-11; RX-12. Claimant was also diagnosed with an irritable colon by Dr. Boackle and irritable bowel syndrome by Dr. Spindler. *See* RX-14; RX-19.

Given the medical evidence, this Court finds that Claimant has sufficiently proven that he suffers from a mental and physical injury in the form of a psychological disorder, chronic headaches, and irritable bowel syndrome. Claimant reported numerous other symptoms, including chronic fatigue, dizziness, tingling in the hands and feet, as well as cold sensitivity. These were unable to be sufficiently documented either through credible testimony or through diagnostic medical evidence. However, the medical articles submitted by Claimant indicate that Gulf War Syndrome is a chronic, multi-symptom illness. Therefore, it is not necessary that each one of the symptoms Claimant alleges be present. Additionally, there is some evidence to indicate that these conditions preceded any potential chemical exposure in Saudi Arabia. *See* RX-25, pp. 83-87; RX-12, p. 1. However, these injuries are still compensable if Claimant can show that working conditions caused or aggravated his existing injury. After considering the entire record, this Court concludes that Claimant does have both physical and mental injury. This, in and of itself, is sufficient to meet the first prong of Claimant's prima facie case.

2. CLAIMANT'S SHOWING OF A WORK ACCIDENT

In order to invoke the §20(a) presumption, Claimant must also show the occurrence of an accident or the existence of working conditions which could have caused the harm. The Section 20(a) presumption does not assist the Claimant in establishing the existence of a work-related accident. *See Mock v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 275 (1981). Therefore, Claimant has the burden

of establishing the existence of such an accident by a preponderance of the evidence.

The Court must weigh all of the record evidence, including that supporting Claimant's testimony and that contradicting it, in order to determine whether Claimant has met his burden in establishing a work accident. In order to establish his prima facie case under the Defense Base Act, Claimant must show that he was in the "zone of special danger," or area of exposure, and that his condition was caused by, or likely to be caused by his employment. Furthermore, this Court finds that although Title XVI, of Division C, of Public Law 105-277, "Service Connection for Persian Gulf War Illnesses" does not directly relate to civilian defense workers, it should be considered persuasive in establishing Claimant's prima facie case. *See* CX-8. This law provides a legal presumption for U.S. Military Veterans that they were exposed to a list of toxic substances during the Gulf War.

This Court notes that Claimant alleges exposure to several of the substances on the list, including pesticides, Sarin, and sandfly fever. *See* CX-8; CX-64.

In the instant case it is uncontested that Claimant was employed by Respondent in Saudi Arabia during the period of the Persian Gulf War. *See* CTX-1. The working conditions which Claimant argues caused his health condition included exposure to low-level Sarin within the nerve gas plume, exposure to oil well smoke caused by burning oil wells in Kuwait, pesticides, and toxic substances from the SCUD missile attacks. *See* CX-64.

1. Zone of Special Danger

A. Ground Fighting and Air Strikes

This Court finds that Claimant has not demonstrated a sufficient exposure history for acquiring Gulf War Illness. His employment history indicates that he was stationed exclusively in Riyadh at Respondent's camp during the duration of his employment in Saudi Arabia. *See* RX-10. The maps entered into evidence indicate that Riyadh was far from the Kuwait border and out of range of the fighting. *See* RX-1; RX-21; RX-22. Additionally, Mr. Larry Wright testified that Riyadh was approximately 10 to 12 hours driving distance from the border. *See* TR. 142-148. Although, the evidence in Claimant's employment records shows that he was away from his post on limited occasions, none of these occurred during either the ground war or air strikes. *See* RX-7; RX-9. In fact, Claimant's employment records indicate that he was in the United States, not in Saudi Arabia, during the ground and air strikes in January and February of 1991. *See* RX-7; RX-10. The air strikes lasted for a total of forty-two days. *See* CX-82. Although Claimant did return to Saudi Arabia in close proximity to the last day of the strikes, there is insufficient evidence to indicate that he was in a location in danger of chemical exposure. *See* RX-21; RX-22. In light of the evidence, this Court finds that Claimant was outside the zone of special danger, and that working conditions did not exist in this respect that could have caused or aggravated Claimant's condition.

Claimant testified that he did travel to the border on certain occasions both for business and to explore. However, his attendance records indicate that he was away from Riyadh for employment purposes on only two occasions. *See* RX-7; RX-9. Both of these trips took place prior to the ground war and air strikes, therefore there would be no danger of chemical exposure during this time. Claimant also asserted that he did visit the border near the fighting on several occasions. *See* TR. 93-114. He stated that he was issued a protective suit by the United States Army. *See* TR. 93-114. However, this Court finds no evidence in either Claimant's job description or duties to support this assertion. Claimant was never assigned to work with the United States Army, and his main job duty was to train SANG medics. *See* TR. 23-27. Additionally, there is no evidence to indicate when this alleged trip occurred, which is determinative with the zone of special danger analysis. Claimant testified that he visited close to the border on day trips. *See* TR. 93-114. However, given Mr. Wright's testimony regarding the distance of the border from the camp and the maps of the area, this Court finds that it is unlikely that Claimant would have been able to make a trip so close to the border during his one day off from work. *See* TR. 132-142; RX-21. Additionally, Claimant was able to identify only the general locations of these trips, which this Court finds insufficient by itself to establish that he was within the zone of special danger for toxic exposure. *See* RX-21; RX-22.

B. Nerve Gas Plume

Claimant testified that he was exposed to low levels of Sarin gas while within the nerve gas plume from the Khamisiyah explosions. These explosions occurred on March 10, 1991. *See* CX-12. He stated that he specifically remembered making an exploratory trip to the border on March 9 or 10, 1991, within the time frame for the explosions. TR. 39-41. For reasons previously discussed, this Court finds Claimant's testimony on his repeated trips to be insufficient in several respects. First, Mr. Wright testified that Respondent's employees got Fridays off from work. Given the distance between Riyadh and the northern border of Saudi Arabia, it is unlikely that Claimant would have been able to travel to the northern border and subsequently return to work on time. This is bolstered by the fact that Mr. Wright testified that it would take approximately half of a day to drive to the border each way. *See* TR. 140-145. Second, Claimant's testimony on the places and locations that he visited while on these trips to the border were also vague. He has presented no corroborative evidence that he was in a specific area in the northern border during the Khamisiyah. Additionally, none of the updated articles submitted indicate that the nerve gas plume extended to Respondent's camp in Riyadh. *See* Respondent's Brief, App. 3. Therefore, Claimant has not proven that he was in the zone of special danger with respect to the Khamisiyah explosions.

C. Oil Well Fires

Claimant has also been unable to sufficiently show that he was in the zone of special danger with respect to the Kuwait oil well fires. This Court notes that both Claimant and Mr. Wright testified that there was a visible haze with a fine particulate in the air during the burning. *See* TR. 41-47, 142-148. However, the evidence shows that the location of the fires was over 300 miles from Claimant's camp. *See* RX-21. Additionally, Mr. Wright's testimony indicates that this haze only occurred one or two occasions. In

conjunction with the medical evidence presented by Dr. Friedman, which this Court takes as determinative on the issue, it is evident to this Court that Claimant was outside the zone of special danger with respect to the Kuwait oil well fires. *See* RX-26.

D. Sand Flies/Pesticide Use

Claimant also asserted that he was exposed to toxic chemicals in pesticides as well as sand fly bites. There were numerous articles submitted on the effects of pesticides on the system. Additionally, the one particular pesticide that Claimant claimed that he used, DEET, is listed as a potential hazard in Title XVI, of Division C, of Public Law 105-277, "Service Connection for Persian Gulf War Illnesses." *See* CX-8. This Court notes, however, that the articles cited on pesticide effects specifically state that the detrimental effects of pesticide exposure depend largely on the frequency and level of exposure and that the symptoms manifest immediately. *See* CX-11; RX-26. In light of this, Claimant has not presented sufficient evidence of sand fly fever or pesticide use exposure for the Public Law presumption to be persuasive. Therefore, Claimant has not established a sufficient exposure history to either sand flies or pesticides.

2. Medical Evidence on Causation

The medical evidence in this case is also insufficient to establish that Claimant's multiple symptoms were caused or aggravated by toxic exposure. Claimant presented substantial evidence in medical articles and congressional reports outlining what the effects and symptoms of exposure in these situations would be. However, this Court notes that these articles are only persuasive to the extent that Claimant accurately self-reported his exposure history. For the reasons previously discussed, this Court finds that Claimant's testimony regarding his medical history and exposure history contains major inconsistencies. Therefore, while this Court finds that the articles, reports, and testimony submitted by Claimant as to causation are highly persuasive on the risk of toxic exposure to individuals within the zone of special danger, it has not been sufficiently proven that Claimant was one of those individuals. In reaching this conclusion, this Court has placed determinative weight as to causation on the medical evidence given by the physicians who actually examined the Claimant.

Claimant's medical history indicates that he has seen several physicians since his return from the Persian Gulf and, thus, does not have a treating physician *per se*. Both parties presented experts to testify as to the etiology of Claimant's symptoms. As a preliminary matter, this Court notes that all of the physicians in this case based their conclusions regarding toxic exposure on Claimant's self-reported exposure history, which this Court has previously found to be inconsistent with both his job description and the timetable regarding the events of the War.

Claimant presented evidence regarding the etiology of his physical and mental condition through Dr. Rea's testimony. Dr. Rea, the director of the Environmental Health Center, testified that Claimant's

symptoms were compatible with those of other Gulf War veterans, particularly the sixty to seventy veterans he examined. *See* CX-3. After administering a battery of tests, Dr. Rea concluded that Claimant's symptoms were consistent with toxic exposure and that he exhibited an organic neurocognitive impairment. *See* CX-3. Dr. Rea used Dr. Didriksen's report and testing for evaluating the extent of this neurocognitive impairment. Dr. Didriksen's detailed report summarized Claimant's level of impairment as a marked decrease in neurocognition from someone having his educational and occupational achievements. She also opined that there is a reasonable medical probability that these deficits were caused by toxic exposure. *See* CX-4.

Dr. Hyman also evaluated Claimant as part of a study on Gulf War Illness. This Court will not accord his conclusions determinative weight, given that the medical articles presented by both parties contradict his theory that Gulf War Illness is solely caused by bacteria and not toxic exposure. *See* CX-5. This Court also finds that his treatment method is not supported by the medical articles presented in this case. Of equal importance is the fact that it is highly likely his conclusions were based on Claimant's assertion on the screening form that he was in the military during the Gulf War. *See* CX-5.

Drs. Friedman and Perez, who also evaluated Claimant, concluded that Claimant did not suffer from toxic exposure either physically or mentally. Dr. Friedman, board-certified in internal medicine and occupational medicine, opined that Claimant's multitude of symptoms could not be substantiated upon a physical examination. He added that the symptoms that Claimant described which were not easily documented, such as chronic fatigue and irritable bowel syndrome, could be explained by Claimant's tendency to self-medicate with prescriptions that have known side effects. *See* RX-26. This was a conclusion that was also reached by Claimant's physician while he was in Saudi Arabia. *See* RX-12. Dr. Friedman opined that there was no evidence of extraordinary mental stressors that would have aggravated Claimant's mental state. *See* RX-26. As to Claimant's neurocognitive impairment, Dr. Perez opined that there was no evidence of organic brain disorder present that would be consistent with toxic exposure. *See* RX-25. Dr. Perez opined that Claimant did suffer from a borderline personality disorder, which has resulted in Claimant's development of a belief system that he has multiple symptoms. *See* RX-25.

After evaluating the medical evidence both for and against Claimant's assertions, this Court finds that the medical evidence does not support the claim that his multiple symptoms resulted from his presence in Saudi Arabia. At the outset, this Court notes that Claimant's record includes a notation from the Norwood Clinic, dated July 7, 1998, that diagnoses Claimant with Gulf War Syndrome. However, this particular clinical note contains no medical basis for the conclusion other than Claimant was seen and treated for dryness in his eyes. *See* CX-2. Therefore, it is not sufficient evidence that Claimant's symptoms were a result of toxic exposure. This Court also finds that Claimant was seen on several occasions at this clinic for various complaints ranging from stomach problems to joint pain. *See* CX-2. However, the examining physician was unable to establish any diagnostic abnormalities in Claimant's joints that would be consistent with toxic exposure. *See* RX-15; CX-2.

Both Drs. Rea and Drs. Friedman examined Claimant and testified as to the existence of Gulf War

Illness. Although this Court acknowledges Dr. Rea's extensive qualifications, this Court places determinative weight on Dr. Friedman's opinions regarding Claimant's physical condition and interpretation of the data presented to him. Dr. Friedman's qualifications are equally as extensive as Dr. Rea's. Additionally, this Court finds that Dr. Friedman's conclusions were based on a sufficient evaluation of Claimant's medical records and an accurate assumption regarding the extent of Claimant's exposure to potential toxins in Saudi Arabia. Even though he noted that Claimant would not allow certain tests to be performed, Dr. Friedman engaged in an extensive analysis and interpretation of Drs. Rea and Furlong's records, where Claimant did cooperate. In light of Dr. Friedman's extensive experience dealing with the effects of oil fires on humans, this Court also accepts his conclusion that Claimant was not exposed to any potential hazards from the oil well fires. *See* RX-26. This Court also places determinative weight on Dr. Perez's conclusion that Claimant suffered no organic brain dysfunction. Dr. Perez is both a board-certified psychologist and neurologist, while Dr. Didriksen is not. *See* RX-25; CX-4. In addition to his qualifications, Dr. Perez's conclusions were based on an extensive analysis of Claimant's medical history and a medically sound method of diagnostic evaluation.

After an examination of the entire record, including the articles and medical reports, this Court finds that Claimant has not met his initial burden of proving that working conditions existed which could have caused his physical and mental symptoms. There is evidence in the record indicating that Claimant was inconsistent in reporting both his symptoms and exposure history to the physicians examining him. The evidence also shows that Claimant was not in the special zone of danger, as required, in order to be compensable under the Defense Base Act. As a result, Claimant has not met his initial burden of proof under section 20. The weight of the medical evidence presented further shows that none of Claimant's symptoms were caused, aggravated, or accelerated by his employment with Respondent. Therefore, Claimant's injuries are not compensable under the LHWCA. Since Claimant has failed to meet his section 20 presumption, the remaining disputed issues in this case need not be addressed.

Accordingly,

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that Claimant's claim for benefits is **DENIED**.

Entered this 16th day of May, 2001, at Metairie, Louisiana.

A

JAMES W. KERR, JR.

Administrative Law Judge

JWK/sls